



**Regional Road Maintenance ESA Forum**  
**155 Monroe Ave NE, Renton Washington 98155-4199**

August 17, 2005

Bill Moore  
WA Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600

RE: Western Washington Municipal NPDES Stormwater Comments

Dear Mr. Moore:

The Regional Road Maintenance 4(d) Working Group has reviewed the First Preliminary Draft of the Proposed Municipal Stormwater NPDES General Permit for Western Washington Phase II Small Municipal Separate Stormwater Sewer Systems issued by your group on May 16th, 2005. We wish to thank you for the opportunity to do this review. Our detailed comments on this permit are in the attached document. There are several general areas that are of serious concern and they are addressed below.

- The municipal NPDES permit is intended to regulate the operations and functions of the MS4 system. It is beyond the purview of this permit to regulate land use of private property or receiving waters for the discharges from that system. The permittees have no legal authority to enter private property in pursuit of implementation of this permit, or do inspections, or testing. The conditions of this permit need to be within the compliance ability of the permittees and regulators.
- **Timeframes** - The Department of Ecology is requiring the adoption of ordinances and enforcement actions in a timeframe that does not reflect the sequence of events that must occur at the local municipal level. The schedules cited in the permit need to comply with schedules of municipal governments. Simplifying the compliance schedule is critical; having wide array of different enforcement dates can lead to failure.
- **Monitoring** – The permit requirements should focus on the effectiveness and operational application of the SWMP and should not exceed the CFR driving the permit. The monitoring should focus on the MS4 system and not the receiving waters or sources outside the MS4 system. The number of potential sources of pollutants from non-point sources that enter a municipal system is beyond the ability of municipalities to control. The use of numeric water quality standards is not realistic. The compliance aspect of monitoring should focus on the effectiveness of permittees to implement MEP. BMP effectiveness monitoring should be conducted at a regional or state level, not a permittee level.
- **Stormwater manual** – The stormwater manual is not a regulatory instrument, it has not been through a regulatory process and its use cannot be mandated through permit issuance. Ecology must ensure that wherever the permittee is directed to the Western Washington Stormwater Manual that the language include only the mandatory sections of the manual, and not the recommended sections or appendixes. Permittees are not required to adopt the whole manual by reference alone. All citing of the Western Washington Stormwater Manual must include the ability to use equivalent manuals. Appendix I – needs to be reviewed to ensure that all parts referenced in the text body are contained within the document.
- **Predevelopment forested conditions** – The permit requires that mitigated stormwater flows meet a predevelopment forested condition. Conditions in urbanized and developed areas make these conditions unattainable and would put the permittees in violation of the permit leaving the jurisdictions legally vulnerable.

- **Definitions of New Outfalls, New Discharges, and New Stormwater Sources** – The language in the current draft would cause many existing outfalls to be re-classified as new discharges (over and over) throughout the lifetime of this permit. The replacement of existing structures with different type structures where mandated by environmental permits should not be defined as a new outfall. The current definition of New Stormwater Sources is any new development or redevelopment project, as defined by Appendix I, which discharges in the MS4 system. That means that any single project that adds 5,000 square feet of impervious surface, or converts ¾ of an acre from native vegetation to lawn or landscaped area, etc. would cause the downstream outfall to convert from an existing stormwater to a new stormwater discharge with all of the burdens placed on the permittee thereof.
- **Co-Permittees & Secondary Permittees** – The requirement of regulated small MS4s (e.g. schools, water districts, utilities, cities) to apply as a secondary permittee or a co-permittee with the city or county constitutes an unfunded mandate for the permittee to manage these permittees. Within a multi-jurisdictional MS4 system; each MS4 system should be responsible for the discharge from their system.
- **UIC** - Stormwater discharges to UIC wells are not covered under this permit. Since the discharge is excluded, it can be assumed that the MS4 system is excluded from strictures and requirement of the NPDES permit.
- Three appendices have not yet been published and are not available for review or comment. These are Appendix VI – Annual Report Form; Appendix VII – Application Form and Notice of Intent; and, Appendix VIII – Summary of Implementation of Schedule.

There are concerns that the Department of Ecology does not have the staffing in place to properly support this permit program. The exposure to third party lawsuits will increase as a result of this permit without adequate support from Ecology. The permit should only include elements that can be accomplished by Ecology and the permittee. We wish to express our thanks and appreciation for the opportunity for this review. If you have any technical questions related to these issues please contact Douglas Navetski, the Stormwater Committee Chair at (206) 296-7723. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment, using solutions that are effective and attainable by our programs.

Sincerely,

Debbie Arima  
Regional Road Maintenance Technical Working Group Chair

Attachment

Cc: Regional Road Maintenance Forum Members